

REMARKS

Claims 5-26 are pending in this application. Claims 1-4 were previously canceled in a Preliminary Amendment. The Non-Final Office Action dated July 25, 2006 rejects Claims 5-26. Applicants have amended no claims. The abstract is corrected to remove extraneous information identified in the Office Action. For the reasons discussed below, Applicants submit that the pending claims are patentable over the art of record.

Non-statutory Double Patenting Rejection

The Office Action rejects Claims 5-26 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. patent No. 6,728,731. The current patent application is a continuation of the patent application that issued as U.S. patent No. 6,728,731. A terminal disclaimer is submitted concurrently with this response. Thus, Applicants respectfully request that the rejection be withdrawn.

Claim Rejections 35 U.S.C. § 102

Claims 5-26 are rejected under 35 U.S.C. 102(a) as being anticipated by Boys (US Patent No. 6,314,094).

Boys does not teach “providing a device with an audio content menu of audio content links over a data channel, wherein an audio content link includes an audio content reference to audio content,” and “receiving a request from the device for audio content over a voice channel at a telephony system, wherein the request contains the audio content reference to the audio content requested,” as recited by Claim 5. These features of Claim 5 recites that the audio content menu and the request are received over different channels. The audio content menu is received over the data channel. But, the request is received over the voice channel at a telephony system. Boys does not teach a data channel and a voice channel at a telephony system, nor that the request and the audio content menu are communicated over these channels in the manner recited in Claim 5.

In contrast to Claim 5, Boys discloses that the “stored hyperlinks” are either “stored” on the Internet-capable radio or sent from server 23 over a “connection to a directory server such as server 23.” But, Boys does not disclose that the “stored hyperlinks” are provided over a data channel.

Moreover, Boys discloses that the “selection of one of the stored hyperlinks by the user input invokes the hyperlinks and connects the radio to the server addressed by the hyperlink,” but makes no mention of receiving the request over a voice channel at a telephony system. Boys, col. 2, lines 58-65.

Additionally, Boys teaches away from using a telephony system. Boys discloses a “Internet-capable radio connected by the communication port to the Internet.” Boys, col. 2, lines 57-59, and that “the Internet-capable radio the modem may be a wireless modem, and the Internet-capable radio connects to the Internet of a wireless data packet network.” Col. 2, lines 66-67; col. 3, line 1. Boys teaches that this “Internet-capable radio” and this connection to the Internet are different than a telephony system. “Such channels would not typically be used for telephony or other Internet interaction so that Internet radio devices may be kept economical, compact and dedicated.” Col. 5, lines 45-48.

Applicants note that Boys does mention that “[t]hat is not to say however, that other embodiments including added function such as e-mail and IP telephony could not be practiced according to other aspects of the present invention..” Col. 10, lines 32-35. However, Boys does not disclose or suggest that the “added function” may be used to receive a request from the device for audio content over a voice channel as required by the independent claims.

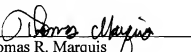
At least for these reasons, Claim 5 is not anticipated by Boys and therefore should be in condition for allowance. Independent Claims 14 and 22 recite similar, albeit different limitations than Claim 5. Therefore, Claims 14 and 22 should be allowed for substantially similar reasons as for Claim 5. Lastly, dependent Claims 6-13, 15-21, and 23-26 depend from Claims 5, 14, and 22

respectively, and thus should be allowable for substantially similar reasons as their independent claims.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Dated: October 25, 2006

Respectfully submitted,

By 
Thomas R. Marquis
Registration No.: 48,900
DARBY & DARBY P.C.
P.O. Box 5257
New York, New York 10150-5257
(206) 262-8900
(212) 527-7701 (Fax)
Attorneys/Agents For Applicant